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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 672.

WILLIAM H. ROBERTSON, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

CHARLES L. PERKINS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 25, 1887.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Charles L. Perkins, plaintiff, and William H. Robertson, defendant, a manifest error hath happened to the great damage of the said William H. Robertson, as by his complaint appear. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty-seven, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the 4th day of April, in the year of our Lord one thousand eight hundred and eighty-seven.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

The foregoing writ is hereby allowed.

WM. J. WALLACE.

2 UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do herby certify that the following pages, numbered from three to fifty, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of William H. Robertson, plaintiff in error, against Charles L. Perkins, defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this fifth day of August, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

(Indorsed:) 9587. U. S. Supreme Court. William H. Robertson, plaintiff in error, against Charles L. Perkins, defendant in error. Writ of error. Due service of a copy of the within writ of error is hereby admitted this 5 day of April, 1887. North, Ward & Wagstaff, attorneys for defendant in error.

3 *Summons.*

Superior court of the city of New York.

CHARLES L. PERKINS, PLAINTIFF,
against
WILLIAM H. ROBERTSON, COLLECTOR OF THE port of New York, defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated, New York, January 26, 1885.

NORTH, WARD, AND WAGSTAFF,
Plaintiff's Attorneys.

(Office and post-office address, 120 Broadway, New York City.)

4 Superior court of the city of New York.

CHARLES L. PERKINS
agst.
WILLIAM H. ROBERTSON, COLLECTOR OF THE port of New York.

The plaintiff above named, by North, Ward, and Wagstaff, his attorneys, complaining of the above-named defendant, alleges:

First. That at the several times hereinafter mentioned the said defendant was collector of the port of New York.

Second. That heretofore, and on or about the eighth day of August, A. D. 1884, this plaintiff imported into the United States from Middlesboro, England, five hundred tons of Bessemer steel rail crop-ends of the value of five thousand eight hundred and forty dollars, or thereabouts.

Third. That Bessemer steel rail crop-ends are the waste of rails in the process of manufacture, and are the short imperfect pieces cut from the ends of rails after they are rolled, and that they are useless for any other purpose except as a raw material to be melted up.

Fourth. Upon his information and belief that the true and lawful rate of duty upon the said merchandise was twenty per centum ad valorem, or eleven hundred and sixty-eight dollars.

5 Fifth. That said defendant, as collector as aforesaid, erroneously and illegally assessed and exacted from this plaintiff duties upon the said merchandise at the rate of forty-five per centum ad valorem, amounting to the sum of twenty-six hundred and twenty-eight dollars, which the plaintiff was compelled to pay and did pay in order to obtain possession of the said merchandise.

Sixth. That this plaintiff duly made and filed due and timely protest in writing against the said erroneous and illegal assessment and exaction of the said duty.

Seventh. That the amount so as aforesaid erroneously and illegally exacted from this plaintiff in excess of the legal duties on said merchandise, and which this plaintiff was compelled to pay and did pay in order to obtain possession of the said merchandise, was fourteen hundred and sixty dollars.

Eighth. That this plaintiff duly appealed to the Secretary of the Treasury from the decision of the defendant, ascertaining and liquidating the duties on the merchandise aforesaid.

Ninth. That the sum so as aforesaid unlawfully exacted by the said defendant from this plaintiff has not, nor has any part thereof, been repaid to this plaintiff.

6 Tenth. That ninety days have not elapsed since the decision of the Secretary of the Treasury on the aforesaid appeal of this plaintiff.

Wherefore this plaintiff demands judgment against the said defendant in the sum of fourteen hundred and sixty dollars, with costs and interest.

NORTH, WARD, AND WAGSTAFF,
Plaintiff's Attorneys, 120 *Broadway, New York.*

CITY AND COUNTY OF NEW YORK, *ss:*

Charles L. Perkins, being duly sworn, says:

I am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

C. L. PERKINS.

Sworn to before me this 27th day of January, 1885.

EDWIN F. CORRY,
Notary Public, N. Y. Co.

7 Superior court of the city of New York.

CHARLES L. PERKINS
vs.
WILLIAM H. ROBERTSON, COLLECTOR, &C.

CITY AND COUNTY OF NEW YORK, *ss:*

Wm. R. How, being duly sworn, on his oath saith:

I am of the age of twenty-one years and upwards. On the twenty-ninth day of January, 1885, at his office in the United States custom-house, in the city of New York, between the hours of 12 m. and 3 p. m., I served the annexed summons and complaint on the defendant, William H. Robertson, by delivering to and leaving with him personally copies of the said summons and complaint and of each of them.

I knew the said Robertson so served to be the defendant and collector of the port of New York.

WM. R. HOW.

Sworn to before me this 29th day of January, 1885.

A. H. GLEASON,
Notary Public, N. Y. Co.

8 (Indorsed:) Superior court of the city of New York. Charles L. Perkins agst. William H. Robertson, collector, etc. Summons and complaint. North, Ward, and Wagstaff, pl'ff's att'ys, 120 B'way, New York.

9 Circuit court of the United States of America for the southern district of New York in the second circuit.

To the judges of the circuit court of the United States of America for the southern district of New York in the second circuit.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

William H. Robertson, petitioner and affiant, respectfully showeth, that he was, prior to the commencement of the suit hereinafter referred to, collector of the customs for the port and district of the city of New York, duly appointed according to law; and that on or about the 29th day of January, 1885, a suit was commenced against him by Charles L. Perkins, in the superior court of the city of New York, for or on account of acts done by him under the revenue laws of the United States, and as such collector; and that he has been served with process in said suit in said southern district, and that no trial has been had in said cause.

He therefore prays that, in pursuance of the act of Congress in
10 such case made and provided, the said cause so commenced in the said superior court may be removed therefrom and entered on the docket of this honorable court, and thereafter proceeded in as a cause originally commenced in this court.

And he will ever pray, etc.

And, being duly sworn, deposes and says, that the matters hereinbefore set forth are true to the best of his knowledge, information, and belief.

W. H. ROBERTSON.

Sworn to before me this 9th day of February, A. D. 1885.

GEO. HELLUM,
Notary Public County N. Y.

I certify that, as counsel for the petitioner, I have examined into the proceedings against him, and have carefully inquired into all the matters set forth in the within petition and affidavit, and that I believe the same to be true.

New York, Feb'y 1, A. D. 1885.

ELIHU ROOT,
U. S. Attorney, Counsellor of the said Circuit Court.

11 (Indorsed:) 9587. U. S. circuit court. Charles L. Perkins vs. William H. Robertson, collector of customs of the port of New York. Petition to remove cause. Elihu Root, United States att'y, att'y for defendant. U. S. circuit court. Filed Feb'y 12, 1885. Timothy Griffith, clerk.

12 The President of the United States of America to the judges of the superior court of the city of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York in the second circuit

shall be certified of a certain cause commenced before you against William H. Robertson, defendant, by Charles L. Perkins, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the circuit court at the city of New York, on the 16th day of February, 1885, as fully and ample as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Morrison R. Waite, esquire, Chief-Justice of the Supreme Court of the United States, the 12th day of February, in the year one thousand eight hundred and eighty-five.

[L. S.] TIMOTHY GRIFFITH,
Clerk.

ELIHU ROOT,
U. S. Att'y, Attorney for Defendant.

13 I have this day personally served upon the clerk of the superior court of the city of New York duplicate of the within writ, at the same time showing the original.

JOEL B. ERHARD,
U. S. Marshall.

FEB. 16, 1885.

(Indorsed:) U. S. circuit court. Charles L. Perkins versus William H. Robertson. Certiorari. Elihu Root, United States attorney, attorney for def't.

I hereby depute John E. Dowley to serve the within writ.
Dated Feb. 12, 1885.

JO'L B. ERHARDT,
U. S. Marshall.

U. S. Marshall's Office. S. D. N. Y., Received Feb. 12, 1885.

14 United States circuit court, southern district of New York.

CHAS. L. PERKINS
vs.
W. H. ROBERTSON, AS COLLECTOR OF THE PORT OF NEW YORK.

The defendant answers to the complaint as follows:

I. He admits that at the several times mentioned in plaintiff's complaint he was collector of the port of New York.

II. He admits that on or about the 8th day of August, A. D. 1884, this plaintiff imported into the United States certain merchandise, but he denies that he has any knowledge or information sufficient to form a belief as to whether the merchandise alleged in the complaint to have been imported at the time therein mentioned was in fact such merchandise as is described in the complaint, or that the value of such merchandise was of the value as stated in the said complaint.

III. He denies that he has any knowledge or information sufficient to

form a belief as to the allegations contained in section third of plaintiff's complaint.

15 IV. He denies that the true and lawful rates of duty on the goods referred to in the complaint was as stated in the complaint.

V. He denies that the plaintiff was compelled to pay or did pay defendant as collector or otherwise the sum stated in the complaint, or any sum in excess of the amount required by law as duties upon the said goods, or that any sum of money unauthorized by law was exacted as duties on said goods or otherwise.

VI. And further answering, defendant alleges that all moneys received by him from the plaintiff in respect of the importations in the complaint alleged to have been made were demanded of plaintiff and were by plaintiff voluntarily paid to him in his capacity as collector of customs as and for duties due the United States on imported merchandise, and were forthwith, before the commencement of this action, and before the receipt by defendant of any protest or objection on the part of the plaintiff, paid over by defendant in his official capacity aforesaid to the United States, and placed beyond his control.

VII. And further answering, defendant alleges that all moneys received by him from the plaintiff in respect of the importations in the complaint alleged to have been made were sums due from plaintiff to the

16 United States as duties according to the rate of duty imposed by law upon articles of merchandise imported by plaintiff and assessed with duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon plaintiff's entry thereof were collected or received by defendant from the plaintiff.

Wherefore, defendant demands judgment that the complaint be dismissed with costs.

WM. DORSHEIMER,
United States Attorney, Attorney for the Defendant.

COUNTY OF WESTCHESTER, *ss:*

Wm. H. Robertson being duly sworn, says that he is the defendant in the above-entitled action; that he has read the foregoing answer, and knows the contents thereof, and that the same is true, to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

WM. H. ROBERTSON.

Sworn to before me this 2nd day of October, 1885.

JOHN KNOX,
Justice of the Peace.

17 (Indorsed:) 9587. U. S. circuit court southern dist. of New York. Charles L. Perkins versus William H. Robertson. Answer. William Dorsheimer, United States attorney, attorney for def't U. S. circuit court, filed Oct. 16, 1885, Timothy Griffith, clerk.

18 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York,

on Friday, the nineteenth day of November, in the year of our Lord one thousand eight hundred and eighty-six.

Present: The honorable Hoyt H. Wheeler, judge.

CHARLES L. PERKINS
vs.
WILLIAM H. ROBERTSON. } 9587.

Now, comes the plaintiff by his attorneys, Messrs. North, Ward, and Wagstaff, and moves the trial of this case. Likewise comes the defendant, by Mr. Henry C. Platt, esq., his attorney. Thereupon a jury is empanelled, and the cause proceeds to trial. After hearing the evidence of the parties, the argument of counsel, and the instructions of the court, the jury retire, and on their return render a verdict whereby they find for the plaintiff.

It is ordered that a certificate of probable cause be entered herein.

It is further ordered that the defendant have a stay of proceed-
19 ings on said verdict for sixty days from Nov. 19, 1886, within which to prepare and serve a bill of exceptions herein.

Counsel for the respective parties consent in open court that the amount of said verdict may be adjusted at the custom-house under the direction of the court.

Ex'd.
A copy.
[L. S.]

TIMOTHY GRIFFITH,
Clerk.

20 United States circuit court for the southern district of New York.

CUSTOM-HOUSE, NEW YORK,
Collector's Office, March 24, 1887.

N. S., 9587.

C. L. PERKINS
vs.
W. H. ROBERTSON. } Verdict dated Nov. 18, 1886.

SIR: The adjustment in the above case is as follows:

Amount overpaid.....	1,460.00
Interest added to date of verdict	199.68
	1,659.68

Respectfully,

D. MAGONE,
Collector.

To the clerk of the United States court for the southern district of New York.

21 (Indorsed:) No. 93. Collector for the dist. of New York , 187, reports adjustment of case of vs. .

22 Circuit court of the United States for the southern district of New York.

CHARLES L. PERKINS
vs.
WILLIAM H. ROBERTSON, AS COLLECTOR, &c.

This action having been brought on for trial before the Hon. Hoyt H. Wheeler, district judge sitting at circuit, and a jury, on Friday, the nineteenth day of November, A. D. 1886, and the jury having rendered a verdict for the plaintiff under a stipulation of counsel that the amount thereof should be adjusted at the custom-house, in the city of New York, under the direction of the court, and the said amount having been accordingly adjusted at the sum of sixteen hundred and fifty-nine $\frac{68}{100}$ dollars at the date of said verdict, now, on motion of North, Ward, and Wagstaff, esq., plaintiff's attorneys, it is:

Ordered, adjudged, and decreed that Charles L. Perkins, the plaintiff, do recover of William H. Robertson, the defendant, the sum of sixteen hundred and fifty-nine $\frac{68}{100}$ dollars, the amount of the verdict so rendered as aforesaid with thirty-five $\frac{19}{100}$ dollars interest thereon from the date of the said verdict to the date hereof, together with his costs of this action to be taxed, and as taxed amounting to the sum of forty-six $\frac{85}{100}$,
23 in all the sum of seventeen hundred and forty-two $\frac{23}{100}$ dollars, and that he have execution therefor.

Dated New York, Apr. 2, A. D. 1887.

Judgment signed this 2nd day of April, 1887.

JOHN A. SHIELDS,
Deputy Clerk.

(Endorsed:) U. S. circuit court, southern district of N. Y. Charles L. Perkins vs. William H. Robertson, collector, &c. Judgment. North, Ward, and Wagstaff, pl'ff's att'ys, 120 B'way. U. S. circuit court. Filed April 12, 1887, 1.30 p. m. Timothy Griffith, clerk.

24 *Bill of exceptions.*

United States circuit court, southern district of New York.

CHARLES L. PERKINS
agst.
WILLIAM H. ROBERTSON.

And afterwards, to wit, on the 18th day of November, 1886, this case came on to be tried before Hon. Hoyt H. Wheeler, district judge of the United States for the district of Vermont, duly assigned to hold this court, and a jury duly empaneled and sworn to try the issues herein.

The parties appeared by their counsel, Messrs. North, Ward & Wagstaff, for the plaintiff; Stephen A. Walker, United States attorney, and Henry C. Platt, assistant United States attorney, for the defendant.

The plaintiff, by his counsel, having opened the case to the jury, offered evidence, which was admitted, tending to show as follows:

Plaintiff's counsel offered and put in evidence the weigher's return, entry, and protest:

25 104228. N. Y. Cat. No. 920. L. D. P.

A special return of the articles embraced in each permit must be made as soon as the weight of the same shall have been ascertained.

Weigher's special return of imports.

Imported S. S. Sportsman, from Middleboro, by C. L. Perkins.

Bond or duty paid.	Marks.	Numbers.	Articles.	Grodd weight.	Tare.	Net weight.
			300 tons spiegeleisen.....	676, 756	.....	676, 756 302–2–1–24
			1,500 " ferro-manganese...	3, 413, 682	.....	3, 413, 682 1, 523–19–1–6
			500 " steel rail ends	1, 112, 424	.....	1, 112, 424 496–12–1–12

R. D. H. S. B. District and port of New York, Aug. 22, 1884.
G. B. BAER, *U. S. Weigher.*

(Received in 5th division, Aug. 22, 1884.)

26 *Entry.*

Mulholland & Hickcox, custom-house and commission agents, 51 Exchange Place, New York.

2277. 104228.

Entry of merchandise imported by C. L. Perkins in the ship Sportsman, whereof is master, arrived Aug. , 1884, from Middlesb'ro; New York, Aug. 8, 1884.

Marks, numbers, packages, and contents, 45% 3-10 c. lb. total.

		T.				
Three hundred tons spiegeleisen.....		300.....		9,600.00		Middlesb'ro,
Fifteen hundred tons ferro manganese...		1,500.....		62,580.00		July 22.
				$72,180.00		
E. A. Oct. 29th, '84. RLD.						
Five hundred tons steel rail ends.....		500				
			£1,200 0 0			Middlesb'ro,
4,090,438 lbs. at 3-10 cts.....			$5,840.00			July 22.
	12,271.31	.....	$5,840.00	$72,180.00	78,020.00	
$5,840 — 45%....	2,628.00					
					4,032,000 lbs.	
	$14,899.31	2,920				
		292			4,090,438 "	
H. L. B.....	4,032,000 3-10	12,096.00				
L.....	5,840 45	2,628.00				
		14,724.00			Ch. L. Perkins,	
Am.....	$14,899.31				30 Pine St.	
Orig.....	14,724.00					
Incr.....	$175.31					

P. B. C. L. Perkins,
C. J. Stelle, H. L. B.

$14,724. Aug. 8, J. H.

27 (Endorsed:) 2277. Mulholland & Hickcox. C. L. Perkins. Per S. S. Sportsman. Pl'ff's Exhibit I. Paid Aug. 8, 1884. Arrived Aug., '84. Entered and liquidated Nov. 26, 1884. Increased duty Dec. 2, 1884. 958. 104228. W. R. W. Affirmed Jan. 14, 1885. Appeal No. 20251. Filed Nov. 6, 1884. Protested Nov. 6, 1884. Steel crop ends.

Protest.

MULHOLLAND & HICKCOX (P. O. box 3555),
51 EXCHANGE PLACE,
New York, Nov. 6, 1884.

Hon. W. H. ROBERTSON,
Collector of the port of N. Y.:

SIR: I hereby protest against the assessment of 45% ad valorem
28 on my importation of steel crop ends ex. Sportsman from Middlesborough August 8th, 1884, entry No. 104228. Claiming under Schedule C 1, act of March 3d, 1883, such crop ends are only liable to a duty of 20% ad valorem as metal unwrought not specially enumerated or provided for.

Respectfully, yours,

C. L. PERKINS,
MULHOLLAND & HICKCOX, *Att'y.*

(Endorsed:) 23242. C. L. Perkins. Sportsman. Steel crop ends. Custom-house, New York, Nov. 6, 1884. Received.

The plaintiff, CHARLES L. PERKINS, testified that he was in business as an importer of iron and steel in 1884, and in August of that year imported the steel rail crop ends mentioned in the invoice; that he has been in business as an importer of iron and steel for thirty years; that he is familiar with the different kinds of iron and steel and the different shapes in which it is imported, and knows what steel rail crop ends are; that the steel crop end is the imperfect end of the rail cut off to bring it down to a solid rail of regular length.

29 Q. Are you aware of the uses for which these steel rail crop ends are imported.

(This question was objected to by defendant's counsel as irrelevant, incompetent, and immaterial.)

The COURT. I think, to find out whether it is in a crude state and unwrought, it may be proper to introduce evidence, and we will receive it under your objection.

(To which ruling the defendant's counsel excepted; which exception was allowed by the court.)

Answer. I am; they are imported into this country for remelting or for melting.

Being cross-examined by defendant's counsel, the plaintiff testified that he was acquainted with the manufacture of steel rails and the process of such manufacture; that the crop ends are the ends of the steel rails; that up to the time they are cut off they go through the same process of manufacture as the steel rail; that as far as the process of manufacturing goes

up to the time that they are cut off there is no difference between the steel rail crop ends and the steel rail; they are the ends of the steel rail. When these rails are made, the calculation is to make a rail thirty feet long; that is the standard. Steel rails are rolled from the ingot; the regulation length is thirty feet. The ingot is made heavy enough—enough steel in it, so as to be as sure as possible that the rail will turn out thirty feet, and long enough to cut off the ragged end. The ingot is made
30 heavier than the rail so as to allow these ends to be cut off so as to make a good, sound thirty-foot rail. Sometimes there is an imperfection in the rail which requires a larger amount to be cut off from it; in which case it brings it down to twenty-eight feet, and so on less than thirty feet long; but the calculation is to roll the rail thirty feet long. But if the rail is rolled longer than that, then they cut off the ends to make thirty feet. The ingots are made of the same weight. The object of cutting the ends off is to make a sound rail. The steel rail ends imported in this case were Bessemer steel. Bessemer steel is a well-known article of commerce. In a general way it is made as follows: Pig-iron is put into a converter, as it is called, and it is then subjected to heat; all the carbon is driven off. When heated to a certain point it is known by the light, by the color of the flame, that all the carbon is out. They extract the carbon; then they put in a certain amount of manganese, or a certain amount of pig-iron, which has been analyzed to find out the exact proportion of manganese or carbon in it, and that is put back again into the iron from which all the carbon has been extracted, so they are able to put back a certain amount, which makes Bessemer steel.

In all that process of manufacture the whole rail, including the ends, is put through, and that produces a metal granular in its texture, that is, metal produced from iron or its ores, and that metal is called Bessemer steel; Bessemer metal. It is called Bestemer steel.

31 The plaintiffs called as a witness GEORGE A. EVANS, who testified that he was in the iron business; had been a manufacturer for twenty-odd years, and in the course of his business had occasion to use a few steel rail crop ends.

Q. Do you know the purpose for which steel rail crop ends are imported for use?

(This question was objected to by defendant's counsel as irrelevant, immaterial, and incompetent. The question was allowed by the court, to which ruling defendant's counsel excepted; which exception was allowed by the court).

Answer. I do.

Q. Be kind enough to state to the jury the use to which steel rail crop ends are put.

A. Steel crop ends are made to sell. They are used the same as pig-iron in the manufacture of some other material, of some other character, or some other form, and I believe in no other case except for ballast. The same process in the use of steel rail crop ends is observed as would be used for pig-iron; melting it; making it fluid; it must be fluid before it is steel again. I never knew of any other use to which they are put than to be put into a furnace to be melted up.

On cross-examination this witness testified that he was familiar with the

process of the manufacture of steel rails. The pig-iron is melted and run through this process of melting, and goes out through a cupola in a
32 stream from two to six inches large. This molten metal leaving this cupola is received in a large receptacle, and it is then moved around and around from one place to another up to a dome, which is very high, and this receptacle is then gradually raised and turned over on its side, allowing this metal to run into what we call a converter. Then to this converter heat is applied to the extent of 132 degrees. Here it is heated again until it gets to a white livid heat, and then the carbon, as far as the eye will perceive, has gone from this iron; it is a white liquid. Then there is a metal we call speigel that we put into that, which flames up like a little torch of fine wood; that converts it into what we term steel. The blast is applied again, only for a moment, when there is a little puff; then it is a liquid steel, as liquid as gas. This process goes on; this converter is turned over on its side and this liquid is run into another receptacle about as large as the one that received it; it is then lowered by strong machinery down to a large crane, which receives it and carries it around to a place about as large as the court-room, which is filled with retorts about a foot wide and about seven or eight feet long. In the bottom of this receptacle that this liquid is in now there is a faucet, very much as a beer faucet, only in the side. This is carried along and fills these full, going right along from one to the other until they are filled. When that is cooled it is a steel ingot.

Now we take an ingot and put it into a roll that is automatic.
33 It is rolled in and out again; then it is hitched on a crane and carried out to hammer that works by steam or a little forge. On the ends of these two bars there is something that may be what we call windpuffs; it isn't solid, on coming out of the hammer. We cut off a little piece of that, possibly half a foot, possibly a foot. They move it along until they get the length they want, 28 or 30 feet, or whatever size they require, and it is cut off. This is followed up by cutting four billets out of this rail we have rolled; it is usually cut into four billets. The top of this rail may be defective, and it is cut off to make it good. The ingots are manufactured into the bloom. The bloom goes through a heating process. After heating they are passed through rollers—run through five heated rollers back and forth, until it gets to the finishing roll; that makes a rail that is of the section required.

From the bloom it is manufactured finally into a rail, and the imperfect ends are cut off to make it sound.

On his direct examination this witness testified:

The first bloom would be solid; that is, there would be four, and on the last one, the top of the last one might be so much poorer that it would have to be cut off. That is scrap steel, or whatever you call it. The bottom of the ingot might be good; this top is very uncertain. We cut off the ends for the purpose of making the rail sound.

On his re-cross-examination this witness testified:

By Mr. PLATT:

Q. Your idea is that this is scrap steel?

34 A. It takes the same place as pig-iron; we melt it over again.

Q. I understand you to say it is scrap steel?

A. Whatever you call it. It takes the place of pig-iron; we melt it right over again.

Q. I am asking you what it really is?

A. It is scraps to make steel again; it is the same as pig-iron.

Q. Isn't it steel?

A. Not in that condition; it is scrap.

Q. Scrap what?

A. Well, I tell you it is iron again; we melt it.

Q. And you say these are steel crop ends?

A. I say they are the crop ends of steel rails.

Q. Are they not steel?

A. Certainly; they are steel. They are scrap steel. There is no question about that, because you can't turn it back into steel again without melting. It has to be melted again in order to put it into steel.

It was admitted upon the trial that the entry was liquidated on the 26th day of November, 1884, and the protest says November 6, 1884.

At the close of the plaintiff's evidence defendant's counsel moved for a direction of verdict for the defendant on the grounds: First, that the protest was served and filed before liquidation, and was therefore premature; second, that no proof was offered or given to show that there was any appeal to the Secretary of the Treasury or any decision on such appeal, and no proof of the date of such decision to show that this suit was
35 brought in time; third, that the plaintiff has not shown facts sufficient to entitle him to recover. This motion was denied by the court, to which ruling defendant's counsel excepted, which exception was allowed by the court.

On behalf of the defendant, CHESTER GRISWOLD testified that he was a steel manufacturer and president of the Troy Steel and Iron Company; familiar with the article known as steel rail crop ends; that a steel rail crop end is the cropping of the steel rail itself. The steel rail is made in length somewhat in excess of the prescribed lengths, and these are the ends that are cut off to bring it to a uniform length. The standard length of a steel rail is thirty feet, with an allowance for shorter lengths. In the process of manufacture, if the rail is more than thirty feet long, the object of cutting the ends off is to get the prescribed length, which is thirty feet. These steel rail crop ends go through the same process of manufacture as the other part of the steel rail. That he is familiar with the process of manufacture which these steel rail crop ends go through; that pig-iron is taken and melted and put into what is called a converting vessel. It is then decarbonized, and a certain fresh metal added to it to give it the proper amount of carbon. It is then passed into an ingot, and from that it is rolled into a bloom, and from the bloom into a finished rail. The rail is completed and goes to market immediately upon the cropping of the ends. Steel rail crop ends are generally bought by the ton.
36 Blooms are the first stage beyond the ingot. The bloom is the intermediate state between the ingot and the rail. Blooms are used for manufacturing rails and other purposes. In the manufacture of other articles from blooms they are reheated, not remelted. Steel rail crop ends are put to a variety of uses; they are used for manufacturing other articles either directly or by remelting them. They may be used without remelting and are often so used. They have a value as a manufactured article other

than for the purpose of remelting; there are several processes for utilizing them; one is to cut the rail end into three pieces, taking the head and the throat and the foot, each one of those pieces serving a convenient shape for another manipulation. Another way is to reduce the end by compression into a flat bar, and then from that it is manipulated into shape—rolled into plates, may be. One way is to slit the crop end through so as to make the head of the rail by itself, making a section right through just under the head; that makes a bar of dimensions. That is manufactured into shape and rolled into finishing bars; made into crowbars; a variety of shapes. If it is a long crop end it can be utilized in a larger shape than a smaller one without remelting. The thin part of the crop end is used for rolling down into smaller shapes, and the same way with the foot. Each of these pieces, the heads, the throat, and the foot, is utalized for different purposes without remelting; they are remanufactured into other articles by that process. Steel rails can be remelted as well as the crop ends; the material of the rail crop ends is steel, the same as the
37 rail, manufactured the same as the rail, and wrought the same as the rail.

On cross-examination by plaintiff's counsel, this witness testified:

That the crop ends has a special fitness for particular purposes for certain shapes.

Q. In its present condition?

A. No, I don't think it has. In using a piece of Bessemer steel of that kind we would cut it into three bars and roll it into shape. That is one of the processes in which the crop ends can be used.

Q. Am I to understand you as testifying that that is the principal use of them?

(This question was objected to by defendant's counsel as immaterial and irrelevant, which objection was overruled by the court, to which ruling defendant's counsel excepted, which exception was allowed by the court.)

Answer. Well, I don't know that I can answer that positively, they are used both ways. An ingot is a piece of cast steel; that is to say, it is a molten metal run out of the converter into a mold, and in practice the ingot is the same weight as the bloom. The bloom is a bar of steel or iron generally cut to a uniform length, proportionately to the size of the rail you want to make. The bloom is cut into a section-bar seven or eight feet long, or four or five feet long, and seven or eight inches
38 square, and that bar is a perfect piece of metal from which a rail is manufactured by being put through a series of rollers. When the rail comes out of the roll it does not have a true end; the end is always more or less ragged, and has to be cut off to leave a sound end to the rail.

The witness further testified that he was familiar with the practical manipulations of Bessemer steel; that there is no difficulty in welding it, and particularly in moderately small masses, such as an ordinary bar; there is no difficulty in welding rail ends; they make a perfect weld. When we roll a perfect piece of iron down into shape or into a bar, the imperfections, if any, do not necessarily remain there; the imperfections generally roll out.

The testimony of ALEXANDER J. LEITH, on behalf of the defendant, tended to show:

That he was president of the Joliet Steel Company and familiar with the article known as steel crop ends, or Bessemer steel crop ends; that in the manufacture the end of the rail is cut off to make the rail the exact length that is ordered. In doing so the bloom or the ingot first is made as near the weight as possible, so as to cut off as little as possible, unless there is a remanufacture, such as is sometimes done by running the end that we cut off into another product as well as rails. The object of cutting the rail off so as to make a small piece is just simply to cut the jagged end off and make the rail a true rail at the end. That is one way. The other way is to put a little more steel into your ingot and cut a longer rail and for other purposes. These steel rail crop ends come in various lengths. There is one mill in this country that cuts off rail ends and puts them into the wire direct, sometimes as long as five feet. Wire is sometimes remanufactured from these ends. (The mill he spoke of is the Cleveland Rolling Mill.) This is done without remelting; they are reheated but not melted; they remain in the same composition of steel as it was in the rail. The crop ends are steel; they are part of the rail; the steel doesn't alter its condition from the time it is made into steel; it only alters its manufactured shape.

Q. Is there any particular meaning to the term unwrought metal, commercially?

(This question was objected to by counsel for the plaintiff as incompetent and irrelevant, and was excluded by the court, to which ruling defendant's counsel excepted, which exception was allowed by the court.)

The witness stated he had bought melting crops, and manufacturing crops; but it is generally known as melting ends. That depends upon the size of them, size and condition. We sell steel rail crop ends to manufacture, and we also manufacture ourselves, direct, some into harrow teeth, into crowbars, and all manner of small manufactures of steel. We also manufacture horseshoes from them.

The various parts of the steel rail crop ends may be cut and utilized without remelting; by reheating; they go through the same process of manufacture as the other part of the steel rails; they are a part of the rail until cut off.

There is no particular shape to the steel bloom; it is a mass of steel in different shapes and different sizes. The bloom itself is no good without being remanufactured.

There is a difference between the ingot and the bloom; the ingot has never been wrought in any way; the bloom must be hammered.

On his cross-examination, this witness testified:

When the molten metal comes out of the converter it is run into a mold, and that lump, when it is cooled, or partially cooled, is an ingot; and then that is either hammered as a whole and cut into pieces, or hammered and rolled. That would not necessarily be a bar; it would be a piece of metal having a shape of some kind as contradistinguished from a lump that might be dropped out of a molten mass onto the ground.

The Joliet Steel Company make steel rails, and manufacture all kinds of small products, in this country, at Joliet, Illinois.

On his re-direct examination this witness testified:

That this is called Bessemer steel on account of the certain process of manufacture which it goes through. If we begin with the ore we can get it in pig-iron, and from pig iron into an ingot. We don't
41 make a bloom. When it gets in the ingot we reheat it and run it straight into a rail without being touched. The metal is wrought from the time it is an ingot; it is not wrought before that, because it is in a liquid condition. It is wrought after it becomes a solid. The process after that is what we call being wrought. But generally the ingots are made into blooms, and blooms into rails; that was the process until recently.

At the close of the testimony counsel for the defendant made a motion to direct a verdict for the defendant on the grounds that the plaintiff has not produced evidence sufficient to make a case; that there is no evidence that the imported articles are unwrought metal and that it is steel, which is otherwise provided for in the tariff. This motion was denied by the court, to which ruling defendant's counsel excepted, which exception was allowed by the court.

The court thereupon charged the jury as follows:

The only question there is here, gentlemen, is, whether this is wrought or unwrought metal; as I understand the meaning of the word "wrought" in the tariff act, it means wrought into something suitable for use, not merely that it has been wrought in some manner by being manufactured or treated, as being moulded, or hammered, or handled, not that simply, but wrought into something.

Now, if this is a mere excess of material as the result of making
42 steel rails, a mere overflow, or excess of material that is left after that, then it is not a wrought metal within the sense of the tariff act. As I said before, in making lead into bullets, in making a perfect bullet, there is a little cut off which is mere lead again, as it is not wrought into anything, that could not be a manufacture of lead, but a bullet might be. Or the end sawed off of a board might be an excess of the wood, but the board before it is cut off is lumber. After it is cut off, it might be an excess of something.

Now, if this is a mere excess in the manufacture of the rails, then it is not a wrought metal within the meaning of the tariff act. On the other hand, if it is something for use in itself, made or prepared for use in itself, then it would be wrought metal. The whole case turns right on that question as I understand it, whether this is an excess of material left over after making the rail merely, or whether it is something suitable for use in itself, made at the same time with making the rail. If it is something left over in excess of the material, return a verdict for the plaintiff. If you think it is an article fit for use in itself, madeat the same time as making the rail, then return a verdict for the defendant.

I think that is all I need to say.

Counsel for the defendant excepted to that part of the charge which states that the only question for the jury in the case is whether this is wrought or an unwrought metal; also to that part of the charge
43 which states in substance that if this article is a mere excess of material in making steel rails, it is not a wrought metal in the sense of the tariff act.

The defendant's counsel asked the court to charge that if the jury find from the evidence that these articles are steel not specially enumerated or provided for in the tariff act, that the defendant is entitled to a verdict under clause 183, of schedule C, of the tariff act of 1883, which request was denied by the court, to which ruling defendant's counsel excepted, which exception was allowed by the court.

Defendant's counsel also requested the court to charge the jury that the plaintiff having protested only that these articles were metal unwrought, are not entitled to recover, unless the jury find said articles were metals unwrought and nothing else; that if the jury find that they are not metals unwrought, the defendant is entitled to a verdict. In other words, that the plaintiff can not raise any issue except that specifically raised in his protest, that is, that these articles are metals unwrought. This request was denied by the court, to which ruling the defendant's counsel excepted, which question was allowed by the court.

Defendant's counsel also requested the court to charge the jury that if the jury find from the evidence that the imported articles were articles not specially enumerated or provided for in the tariff act, composed
44 wholly or in part of iron and of steel, whether partly or wholly manufactured, that this plaintiff is not entitled to recover. This request was denied by the court, to which ruling defendant's counsel excepted, which exception was allowed by the court.

The court further charged the jury that the burden of proof is upon the plaintiff to show that his duty was unlawfully exacted. It is for the plaintiff to show you that it is an unwrought metal. It is for the plaintiff to show you that by a fair preponderance of proof, the burden is upon the plaintiff.

Whereupon the jury retired, and after an absence of about one hour came into court, and the jury having been called, the clerk of the court said as follows:

The CLERK. Gentlemen, have you agreed upon a verdict?

The FOREMAN. We have not.

The COURT. I have received what I understand to be perhaps a misunderstanding of the charge of the court, and therefore I will just restate to you.

Now, if these ends—these crop ends they call them—are not wrought into anything suitable for use in themselves, in their present shape, if they are not wrought into anything to be suitable for use in itself in its present shape, but were a mere excess of the material in making the steel rails, then return a verdict for the plaintiff. If they are wrought into anything suitable for use, suitable for use in the shape in which
45 they are left, you may return a verdict for the defendant. Wrought into anything suitable for use; is it that, or an excess, something left over. That is all. You may retire.

To this portion of the charge defendant's counsel excepted; which exception was allowed by the court.

Whereupon the jury returned a verdict for the plaintiff.

Upon the trial it was stipulated that if the jury should find a verdict for the plaintiff on the main question raised by his protest a verdict should be entered generally in his favor, subject to adjustment at the custom-house as to amount, under the direction of the court.

And for as much as the exceptions, matters and things aforesaid, would not otherwise appear by the record, I have settled, allowed, and signed this bill of exceptions on the prayer of the said defendant, by his counsel; and it is

Ordered that the same be filed as a part of the record herein with like force and effect as if the same had been reduced to writing, signed, and filed before the cause was given to the jury.

Witness my hand at New York this 9th day of March, 1887.

HOYT H. WHEELER.

46 OFFICE OF THE UNITED STATES ATTORNEY
FOR THE SOUTHERN DISTRICT OF NEW YORK,
New York, March 8th, 1887.

Hon. HOYT H. WHEELER,
District Judge:

DEAR SIR: I send you enclosed bill of exceptions in the case of Perkins vs. Robertson, N. S., 9587.

The same has been submitted to plaintiff's counsel and settled by consent.

Will you please sign and return to this office.

Very respectfully,

STEPHEN A. WALKER,
U. S. Attorney.

We join in above request.

NORTH, WARD & WAGSTAFF,
Attorneys for Pl'ff.

(Endorsed:) U. S. circuit court, southern district of New York. Charles L. Perkins versus William H. Robertson. Bill of exceptions. Stephen A. Walker, United States attorney, attorney for defendant. U. S. circuit court. Filed Mar. 9, 1887. Timothy Griffith, clerk.

47 *Assignment of errors.*

Supreme Court of the United States.

WILLIAM H. ROBERTSON, PLAINTIFF IN ERROR,
CHARLES L. PERKINS, DEFENDANT IN ERROR.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the said Court, at the Capitol in Washington, comes the said plaintiff in error, by Stephen A. Walker, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit: That by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant in error against the said plaintiff in error, whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff against the said defendant.

And the said plaintiff prays that the judgment aforesaid, for the error aforesaid and other errors in the record and proceedings aforesaid, may be

reversed, annulled, and altogether held for nothing, and that he, the said plaintiff may be restored to all things which he has lost by occasion of said judgment, &c.

STEPHEN A. WALKER,
Attorney for Plaintiff in Error.

48 (Indorsed:) United States Supreme Court. William H. Robertson, plaintiff in error, vs. Charles L. Perkins, defendant in error. Assignment of error. Due service of a copy of the within assignment of error is hereby admitted the 5 day of April, 1887. North, Ward & Wagstaff, att'ys for def't in error. U. S. circuit court. Filed Ap'l 5, 1887. Timothy Griffith, clerk.

49 UNITED STATES OF AMERICA, *ss:*

To Charles L. Perkins, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and eighty-seven, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein William H. Robertson is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated April 4, 1887.

WM. J. WALLACE.

50 (Indorsed:) 9587. U. S. Supreme Court. William H. Robertson, plaintiff in error, against Charles L. Perkins, defendant in error. Citation. Due service of a copy of the within citation is hereby admitted the 5 day of April, 1887. North, Ward & Wagstaff, attorneys for defendants in error.

(Indorsement on cover:) No. 672. William H. Robertson, collector of the port of New York, plaintiff in error, vs. Charles L. Perkins. S. New York. C. C. U. S. Filed August 25, 1887.

Office Supreme Court U. S.
FILED
DEC 18 1888
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

WILLIAM H. ROBERTSON, COLLECTOR OF the port of New York, plaintiff in error,
vs.
CHARLES L. PERKINS.
} No. 672.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

WILLIAM H. ROBERTSON, COLLECTOR OF the port of New York, plaintiff in error,
vs.
CHARLES L. PERKINS.
} No. 672.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

ABSTRACT OF THE CASE.

The defendant in error, in August, 1884, imported 500 tons of steel-rail ends. On the 6th of November, 1884, he filed protest, claiming that the merchandise was only liable to a duty of 20 per cent. ad valorem, as "metal unwrought not specially enumerated or provided for." (Rec., p. 10.) The same day he appealed. On the 26th

of November thereafter, the duties were ascertained and liquidated at 45 per cent. ad valorem, as "steel not specially enumerated and provided for." The liquidation was affirmed on the 14th of January, 1885, and this suit was brought on the 26th of January, 1885, to recover the alleged excess of duties paid by the importer.

On these facts two questions arise on the record:

(1) Were the protest and appeal which were filed twenty days before the ascertainment and liquidation of the duties such a compliance with the provisions of section 2931, Revised Statutes, as would sustain a recovery?

(2) Should the merchandise have been taxed as "metals unwrought, not specially enumerated and provided for, at 20 per centum ad valorem?"

SPECIFICATIONS OF ERROR.

(1) The court erred in refusing to grant the following motion made by the defendant's counsel (Rec., p. 13):

> At the close of the plaintiff's evidence defendant's counsel moved for a direction of verdict for the defendant on the grounds: First, that the protest was served and filed before liquidation, and was therefore premature; second, that no proof was offered or given to show that there was any appeal to the Secretary of the Treasury, or any decision on such appeal, and no proof of the date of such decision to show that this suit was brought in time; third, that the plaintiff has not shown facts sufficient to entitle him to recover. This motion was denied by the court, to which ruling defendant's counsel excepted, which exception was allowed by the court.

(2) The court erred in sustaining the objection of the plaintiff's counsel to the following question asked by defendant's counsel of Alexander J. Leith (Rec., p. 15):

> Q. Is there any particular meaning to the term unwrought metal, commercially ?
>
> (This question was objected to by counsel for the plaintiff as incompetent and irrelevant, and was excluded by the court, to which ruling defendant's counsel excepted, which exception was allowed by the court.)

(3) The court erred in the following instruction given to the jury in the general charge (Rec., p. 16).

> The only question there is here, gentlemen, is whether this is wrought or unwrought metal. As I understand the meaning of the word "wrought" in the tariff act, it means wrought into something suitable for use, not merely that it has been wrought in some manner by being manufactured or treated, as being molded, or hammered, or handled ; not that simply, but wrought into something.
>
> Now, if this is a mere excess of material as the result of making steel rails, a mere overflow or excess of material that is left after that, then it is not a wrought metal within the sense of the tariff act. * * *.
>
> Now, if this is a mere excess in the manufacture of the rails, then it is not a wrought metal within the meaning of the tariff act. On the other hand, if it is something for use in itself, made or prepared for use in itself, then it would be wrought metal. The whole case turns right on that question as I understand it, whether this is an excess of material left over after making the rail merely, or whether it is something suitable for use in itself, made at the same time with making the rail. If it

is something left over in excess of the material, return a verdict for the plaintiff. If you think it is an article fit for use in itself, made at the same time as making the rail, then return a verdict for the defendant.

(4) The court erred in the following additional instructions given to the jury (Rec., p. 17):

I have received what I understand to be perhaps a misunderstanding of the charge of the court, and therefore I will just restate to you.

Now, if these ends—these crop ends they call them—are not wrought into anything suitable for use in themselves, in their present shape, if they are not wrought into anything to be suitable for use in itself in its present shape, but were a mere excess of the material in making the steel rails, then return a verdict for the plaintiff. If they are wrought into anything suitable for use, suitable for use in the shape in which they are left, you may return a verdict for the defendant.

BRIEF OF ARGUMENT.

The first question in this case, which is, whether a protest and appeal filed twenty days before the ascertainment and liquidation of the duties is a sufficient compliance with the requirements of section 2931 of the Revised Statutes to sustain an action, is fully discussed in the brief filed in the case of *Davies* vs. *Miller and Rollins*, No. 1279, with which this case was advanced to be heard.

The court should have permitted Alexander J. Leith to answer the question, "Is there any particular meaning to the term unwrought metal commercially?" (Rec., p. 15.)

The witness was shown to be sufficiently familiar with the merchandise to render him competent to testify whether or not "unwrought metal" was a commercial designation.

If it was a commercial designation, it was relevant to prove it in this issue, as a means to determine the proper classification of the import.

The second and third errors raise the question of the proper classification of the import.

The importers maintain it should be classified under the following clause of Schedule C of the act of 1883 (22 U. S. Stat., 501):

> Mineral substances in a crude state and metals unwrought, not specially enumerated or provided for in this act, twenty per centum ad valorem.

This clause is the next to the last in the metal schedule.

The protest was specific, and was limited to this clause (Rec., p. 10).

The importer can not recover on any other ground than that set forth in his protest. (*Davies* vs. *Arthur*, 96 U. S., 148.)

The defendant classified the goods under the following clause of the same act (22 U. S. Stat., 500):

> Steel, not specially enumerated or provided for in this act, forty-five per centum ad valorem: *Provided*, That all metal produced from iron or its ores, which is cast and malleable, of whatever description or form, without regard to the percentage of carbon contained therein, whether produced by cementation, or converted, cast, or made from iron or its ores, by the crucible, Bessemer, pneumatic, Thomas-Gilchrist, basic, Siemens-Martin, or open-hearth process, or

by the equivalent of either, or by the combination of two or more of the processes, or their equivalents, or by any fusion or other process which produces from iron or its ores a metal either granular or fibrous in structure, which is cast and malleable, excepting what is known as malleable iron castings, shall be classed and denominated as steel.

The following clause also occurs in the same act (22 U. S. Stat., 497):

Iron in pigs, iron kentledge, spiegeleisen, wrought and cast scrap iron, and scrap-steel, three-tenths of 1 cent per pound; but nothing shall be deemed scrap-iron or scrap-steel except waste or refuse iron or steel that has been in actual use and is fit only to be re-manufactured.

The language of the court, which is assigned for error among other rulings, is:

If they are not wrought into anything to be suitable for use in itself in its present shape, but were a mere excess of the material in making the steel rails, then return a verdict for the plaintiff. (Rec., p. 17.)

The import in this case was the ends cut off steel rails to reduce them to desired lengths. The plaintiff testified "the steel rail ends imported in this case were Bessemer steel. Bessemer steel is a well-known article of commerce." (Rec., p. 11.)

Alexander J. Leith, president of the Joliet Steel Company, testified (Rec., p. 15):

The object of cutting the rail off so as to make a small piece is just simply to cut the jagged end off and made the rail a true rail at the end. That is one way. The other way is to put a little more steel

into your ingot and cut a longer rail and for other purposes. These steel-rail crop ends come in various lengths. There is one mill in this country that cuts off rail-ends and puts them into the wire direct, sometimes as long as 5 feet. Wire is sometimes remanufactured from these ends. (The mill he spoke of is the Cleveland Rolling Mill.) This is done without remelting; they are reheated, but not melted; they remain in the same composition of steel as it was in the rail. The crop ends are steel; they are part of the rail. The steel doesn't alter its condition from the time it is made into steel; it only alters its manufactured shape.

* * * * *

The witness stated he had bought melting crops and manufacturing crops, but it is generally known as melting ends. That depends upon the size of them, size and condition. We sell steel rail crop ends to manufacture, and we also manufacture ourselves, direct, some into harrow teeth, into crowbars, and all manner of small manufactures of steel. We also manufacture horseshoes from them.

Chester Griswold, president of the Troy Steel and Iron Company, testified (Rec., pp. 13 and 14):

Steel-rail crop ends are put to a variety of uses. They are used for manufacturing other articles either directly or by remelting them. They may be used without remelting, and are often so used. They have a value as a manufactured article other than for the purpose of remelting. There are several processes for utilizing them; one is to cut the rail end into three pieces, taking the head and the throat and the foot, each one of those pieces serving a convenient shape for another manipulation. Another way is to reduce the end by compression into a flat

bar, and then from that it is manipulated into shape—rolled into plates, may be. One way is to slit the crop end through so as to make the head of the rail by itself, making a section right through just under the head; that makes a bar of dimensions; that is manufactured into shape and rolled into finishing bars; made into crowbars; a variety of shapes. If it is a long crop end it can be utilized in a larger shape than a smaller one without remelting. The thin part of the crop end is used for rolling down into smaller shapes, and the same way with the foot. Each of these pieces, the heads, the throat, and the foot, is utilized for different purposes without remelting. They are remanufactured into other articles by that process. Steel rails can be remelted as well as the crop ends. The material of the rail crop ends is steel, the same as the rail, manufactured the same as the rail, and wrought the same as the rail.

On cross-examination by plaintiff's counsel this witness testified—

That the crop ends has a special fitness for particular purposes for certain shapes.

Bessemer steel in any form not elsewhere specially provided for in the act, is specifically provided for as steel in the second clause quoted, under which the collector classified the goods. The word metal is generic, including all kinds of metals. The word steel is specific, being descriptive of a species of the genus metal. It describes a particular species of the general class known as metals. Being descriptive of a species, it is used in the second clause quoted to select one species out of the general class metals. Thus steel is enumerated, and it is specially provided for at a rate peculiar to itself. This enumeration

and classification the court disregarded and turned the cause upon the single question as to the particular shape of the metal for purposes of utility.

This it is claimed is erroneous, for the word "steel" in the above clause has a statutory definition attached to it which expressly declares that the word "steel" shall embrace steel of "whatever description or form."

George A. Evans, one of the plaintiff's witnesses, testified (Rec., p. 13):

> Q. And you say these are steel crop ends?
> A. I say they are the crop ends of steel rails.
> Q. Are they not steel?
> A. Certainly; they are steel. They are scrap steel. There is no question about that, because you can't turn it back into steel again without melting. It has to be melted again in order to put it into steel.

If the steel ends were, as this witness states, "scrap steel," they would then be more specifically provided for in the third clause quoted, for scrap steel is one degree more specific than steel. Metals is the generic term which embraces all. Steel is a name of a species of that genus. That includes all kinds of steel. Scrap steel is one particular kind of the species steel.

If the cutting of the ends off the rail in the process of manufacturing in order to reduce them to marketable lengths is such an actual use as to bring these rail ends within the definition of actual use as used in the third clause quoted, then this import should have been classified as scrap steel.

The definition of scrap-iron under the act of 1870 (16 U. S. Stat., 264), which is identical with that in the act of 1883, except that by the act of 1883 the definition is extended to steel, was very fully considered by this court in the case of *Schlesinger* vs. *Beard* (120 U. S., 264), in which it was ruled the punchings and clippings of wrought-iron boiler-plates, and the ends of bridge-rods and beams, cut off to bring the rods and beams to the required lengths and remove imperfections, was an actual use of the ends cut off within the meaning of the statute. The reason assigned is thus stated (p. 267):

> It is true the cuttings and clippings had never themselves been used in the boilers or in the bridges, but they had been used in making those structures, and thus had accomplished the purpose for which they were originally manufactured. The plates, rods, and beams of which they were once parts had been used, and these were the waste resulting from that use.

The present case may be distinguished from that in that the cutting of the rail ends in this case involved is a part of the process in the original manufacture of the rails. The rails themselves were not completed as a manufactured product till they were cut, and therefore neither the rails nor the cuttings were in actual use until after the cutting was done.

As is shown by the case of *Davies* v. *Arthur* above cited, in either event, whether the manufacture should have been classified as "steel" or "scrap steel" is equally fatal to the right of recovery of the plaintiff below, for his protest was specifically limited to "unwrought metal."

The interpretation the court below placed upon the

clause "unwrought metal" it is claimed was erroneous. We maintain that the clause does not mean that every metal not specially enumerated, which is not made up into an article or thing useful in itself, is unwrought. The word unwrought qualifies the word metal itself, and does not refer to the form in which it may be found. If by work, used in rolling, hammering, or compounding, the character of the metal, it is changed from what is known as its crude or first condition as a metal to another character of metal known in commerce as a distinct commodity, it is then a wrought metal; as, when pig or cast iron is changed by the process of hammering or rolling until it becomes ductile or malleable, it is called wrought iron, and when it possesses these qualities, and, in addition, is carbonized until it becomes a carburet of iron, it is called steel. It is not unwrought metal. A bar of iron is in itself, in that form, useful for no specific purpose, but it is wrought iron. An ingot of steel is of no use in that form, but it is of a still higher grade than bar or rolled iron, and as a metal is wrought to a greater extent than bar-iron.

The court should therefore have ruled that the merchandise in this case involved was not unwrought metal, and, it is respectfully submitted, the judgment should be reversed.

G. A. JENKS,
Solicitor-General.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1888.

WILLIAM H. ROBERTSON, Collector of the Port of New York,

Plaintiff in Error,

vs.

CHARLES L. PERKINS.

No. 672.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR DEFENDANT IN ERROR.

BURGOYNE QUICK PRINTING CO., COR. WALKER AND CENTRE, N. Y.

Supreme Court of the United States.

WILLIAM H. ROBERTSON,
Plaintiff in Error,

vs.

CHARLES L. PERKINS.

Brief for the Defendant in Error.

Facts.

In August, 1884, Charles L. Perkins imported into the United States five hundred tons of "steel rail crop ends." The plaintiff in error, as collector, assessed and collected duty thereon at the rate of forty-five per centum *ad valorem* as "steel, not specially enumerated or provided for" in the Act of 1883, or as "manufactures, articles, or wares not specially enumerated or provided for" in said act, "composed wholly or in part * * * of steel * * * whether partly or wholly manufactured." The defendant in error paid this duty under protest, claiming that the true rate of duty upon said crop ends was twenty per centum *ad valorem* as "metal unwrought not specially enumerated or provided for" in said Act of 1883, appealed to the Secretary of the Treasury from the decision of the plaintiff in error, and thereafter brought this action to recover back the excess of duty so paid.

The action was commenced in the Superior Court of the City of New York by the service of a summons and complaint (Record, pp. 2, 3). The case was thereupon removed into the Circuit Court of the United States for the Southern District of New York by *certiorari;* a trial was had, a verdict rendered and judgment entered in favor of the defendant in error, which the plaintiff now seeks to reverse.

Two questions only arose in the case:

First, a question of fact as to whether or no these steel rail crop ends were "unwrought metal," within the meaning of the Tariff Act, and second, a question of law, if they were "metal unwrought," whether they were dutiable under the Act of 1883 as a metal unwrought at twenty per centum *ad valorem*, or whether they were dutiable under some other provision of the tariff act at a higher rate.

The plaintiff in error specifies three particulars in which the Court below erred on the trial:

First. In failing to dismiss the plaintiff's complaint at the close of his evidence.

Second. In sustaining an objection to the question, "Is there any particular meaning to the term unwrought metal commercially?"

Third. In certain portions of the charge.

POINTS.

First. At the close of the plaintiff's case the defendant moved that a verdict be directed for the defendant on the grounds:

1. That the protest was served and filed before liquidation, and was therefore premature.

2. That no proof was offered or given to show that there was any appeal to the Secretary of the Treasury or any decision in such appeal, and no proof of the date of such decision to show that this suit was brought in time.

3. That the plaintiff had not shown facts sufficient to entitle him to recover. This motion was denied by the Court, and the defendant's counsel excepted.

As to the first and second grounds for the motion the ruling of the Court was correct.

Under Section 914 of the Revised Statutes of the United States the pleadings in this action were drawn and the issues made in accordance with the practice prevailing in the State of New York. Practice in the State of New York is regulated by the Code of Civil Procedure. Section 481 of that Code requires a complaint to contain "a plain and concise statement of the facts constituting each cause of action." Section 500 requires the answer to contain "a general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief."

By Section 522 each material allegation of the complaint not controverted by the answer, must, for the purposes of the action, be taken as true.

By comparing the complaint (Record, p. 2) with the answer (p. 5), it will be seen that the plaintiff alleged (par. 6) that he "*duly* made and filed *due* and *timely* protest in writing against the said erroneous and illegal assessment and exaction of the said duty." And (par. 8) that he "*duly* appealed to the Secretary of the Treasury from the decision of the defendant ascertaining and liquidating the duties on the merchandise aforesaid"; and (par. 10) (at the time of the verification of the complaint) "ninety days have not elapsed since the decision of the Secretary of the Treasury on the aforesaid appeal;" and that the defendant neither denied either of these alle-

gations or any knowledge or information sufficient to form a belief as to them or either of them. Issue therefore was not joined upon either of these allegations and each of them was admitted so far as this action is concerned by the defendant. The defendant in error, therefore, was not called upon to substantiate either allegation or to be prepared with proof in that regard, or to explain any apparent discrepancy between the dates of the written papers, since, as the case stood, it was admitted on the record that the defendant in error had complied with all the requisites of the statute authorizing him to maintain this action.

The third ground on which it was moved to dismiss the complaint need not now be discussed because the plaintiff in error did not then rest his case, but afterwards proceeded to introduce evidence.

Accident Insurance Company vs. Crandell, 120 U. S., 527.

Second. The counsel for the plaintiff in error asked of a witness (Record, p. 15):

"Is there any particular meaning to the term 'unwrought metal' commercially?" Under objection by counsel for the defendant in error this question was excluded, and an exception taken.

We submit that the words "mineral substances in a crude state" and "metals unwrought," as used in the Act of 1883, are not technical either as having a special sense by commercial usage or as having a scientific meaning different from their popular meaning, and that the evidence was properly excluded.

Marvel vs. Merritt, 116 U. S., 11.

Statutes and contracts should be read and understood according to the natural and most obvious import of the language.

McCloskey vs. Cromwell, 11 N. Y., 593-601.

Third. The portion of the charge excepted to and urged as error instructed the jury :

1. That the question at issue was whether the crop ends were wrought or unwrought metal.

2. That the word "unwrought" in the Tariff Act meant "wrought into something suitable for use," not merely molded, hammered or handled.

3. That if the crop ends in question were merely an excess of material left after the manufacture of steel rails not suitable for use in their present shape then they were unwrought metal within the meaning of the act.

4. That if they were articles fit for use in their present shape, though made at the same time as making the rail, then they were "wrought."

5. If they found these crop ends to be "unwrought," then to render a verdict for the plaintiff; otherwise for defendant.

This charge was correct.

a. There can be no question as to the character of these crop ends. They were short ragged pieces cut from the ends of the rails after they were rolled in order to produce a sound, perfect rail. They were useless in their then shape except for remanufacture. They are usually melted, occasionally are cut into pieces and the pieces forged or rolled. They are never used otherwise. The evidence of all the witnesses agrees in this. Had they conflicted, it would have been for the jury to determine the fact.

b. As the crop ends were waste, produced in the process of the manufacture of rails, useless except for remanufacture, they were "unwrought metal" within the meaning of the tariff act.

Work is defined as follows :

"To convert to use by labor."—Ogilvie (Imperial Dictionary), Worcester.

"To prepare for use or utilize by labor."—Webster.

Unwrought, not manufactured.—Stormonth, Worcester, Johnson.

Copper sheets neither used nor imported for use in the shape in which imported have been held by this Court to be unmanufactured within the meaning of the Tariff Act.

U. S. vs. Potts, 5 Cr., 284.

These crop ends had not been prepared for any use—they were useless except as a raw material to be manufactured—they were not the intended result of any human labor. They were the unwelcome surplus from the manufacture of other articles—the waste chips and splinters unavoidably produced in the workshop. Whatever labor had been expended upon them was so expended not for the purpose or with the intent to produce crop ends but for the purpose of producing rails; and this labor in so far as expended upon these amorphous fragments was utterly lost and wasted. So far as they were concerned, no useful purpose had been subserved by its expenditure. They were mere lumps of metal, fashioned to no shape, adapted to no use, moulded to no purpose. Useless until destroyed. As truly "unwrought" as though the hand of man had never touched, nor his eye seen them.

Unless the term "unwrought," as used in the Tariff Act, means "not wrought or prepared for use," as we contend, then it must have the broad meaning "not operated or worked upon at all." If it had this meaning, then the provision for "metals unwrought" in the Act of 1883 is either tautological or absurd. The act reads: "Mineral substances in a crude state and metals unwrought not specially enumerated or provided for in this act, twenty per centum *ad valorem*."

All metals are necessarily mineral substances. A metal upon which no human labor has been expended is a crude metal; therefore, a mineral substance in a

crude state; therefore, provided for by that phrase. But the instant human labor is expended upon a metal, the metal is so far wrought, unless our definition of the word is accepted as the true one, and therefore it would be neither a mineral substance in a crude state nor an unwrought metal. The shattering of the lump of ore, the burning of the piece of pyrites would leave the residuum useless but wrought. It is submitted that the Legislature could not have intended, and did not intend, any such absurdity.

c. If these crop ends were unwrought metal within the sense of the Tariff Act then they were specially provided for as metal unwrought "not specially enumerated or provided for" otherwise, and were properly dutiable as "metal unwrought."

Paragraph 215 of the Government reprint of the Act of 1883 imposes a duty of 20% on "metals unwrought not specially enumerated or provided for." This is a special provision for, and enumeration of, all forms of unwrought steel not otherwise specially designated. *Unwrought* steel in certain forms *is* otherwise provided for and enumerated, *e. g.*, scrap steel (Par. 145), steel ingots (Par. 177). It follows therefore that all forms of *unwrought* steel are specially provided for, and par. 183, which lays a tax on "steel, not specially enumerated or provided for in this act," has no relation to *unwrought* steel in any form.

The collocation of Par. 183 shows that it is intended to refer to and provide for articles manufactured of steel. It follows immediately after a long list including nearly every one of the coarser form into which steel is wrought. The generality of its expression therefore, must, in consideration, be so limited as to include only articles similar in kind and naturally suggested by the preceding enumeration.

Butterfield vs. Arthur, 16 Blatch., 216–18.
Chegary vs. The Mayor &c., 13 N. Y., 220.

This view is further strengthened by a comparison of the material parts of the Act of 1883 with the corresponding parts of Title Thirty-three of the Revised Statutes, for which it is a substitute.

The material provisions of the Revised Statutes, Sec. 2503, for which the Act of 1883 was a substitute are:

> "All manufactures of steel, or of which steel shall be a component part, not otherwise provided for, forty-five per centum *ad valorem*. But all articles of steel partially manufactured, or of which steel shall be a component part, not otherwise provided for, shall pay the same rate of duty as if wholly manufactured."

Then, following an enumeration of various forms of manufactured steel:

> "Steel in any form, not otherwise provided for, thirty per centum *ad valorem*. Provided that no allowance or reduction of duties for partial loss or damage shall be hereafter made in consequence of rust of iron or steel, or upon the manufactures of iron or steel, except on polished Russia sheet iron."
>
> "Metals unmanufactured, not otherwise provided for, twenty per centum *ad valorem*."

The substituted provisions of the Act of 1883 are:

Following a much fuller enumeration of various forms of manufactured steel.

> "Steel, not specially enumerated or provided for in this act, forty-five per centum *ad valorem*. Provided, &c."; giving a precise definition of what is to be deemed steel.
>
> "No allowance or reduction of duties for partial loss or damage in consequence of rust or discoloration shall be made upon any description of iron or steel, or upon any partly manufactured article

of iron or steel, or upon any manufacture of iron or steel."

"Mineral substances in a crude state and metals unwrought, not specially enumerated or provided for in this act, twenty per centum *ad valorem*."

"Manufactures, articles, or wares not specially enumerated or provided for in this act, composed wholly or in part of iron, steel, copper, lead, nickel, pewter, tin, zinc, gold, silver, platinum, or any other metal, and whether partly or wholly manufactured, forty-five per centum *ad valorem*."

The Act of 1883 did not purport to be a mere revision of pre-existing statutes, a legislative enunciation of existing law, but was expressed to be a substitute for existing law by its very terms, viz.:

"Sec. 6. That on and after the first day of July, eighteen hundred and eighty-three, the following sections shall constitute and be a substitute for Title Thirty-three of the Revised Statutes of the United States."

A comparison of the Act of 1883 with the section of the Revised Statutes, for which it is a substitute, shows that many and important changes in the pre-existing law were made by the Act of 1883.

The rule then that a mere change in phraseology in a revision of a statute does not work a change in the law is not applicable in the interpretation of the Act of 1883.

The Legislature having shown an unmistakable intent to alter the law, in very numerous and important particulars, we submit that any change in the phraseology of the statute is evidence of the intention of the Legislature to change the law, provided such a change fairly and naturally results from the altered phraseology.

The general tendency of the changes made by the

Act of 1883 was to a reduction of duties. It must be assumed that such was the intention of the Legislature. This intent should, therefore, govern in the interpretation of the act. A change in phraseology and arrangement naturally and fairly working a reduction of duty must be deemed intentional and given its proper effect.

Comparing the two statutes, then, we submit that the general provision for all manufactured articles composed wholly or in part of steel, contained in the Revised Statutes, preceding as it did, the enumeration of special forms and articles which were excepted from its operation, had nothing to limit its generality, and necessarily excluded the succeeding general provision "steel, in any form, not otherwise provided for;" from any application to anything but unmanufactured steel, if the whole statute was to be construed so as to give an effective meaning to each part.

If this be true it would necessarily follow that unmanufactured steel was thus provided for and could not be dutiable under the provision for "metals, unmanufactured not otherwise provided for."

Turning to the Act of 1883, we find that instead of commencing with a general provision, certain special kinds of manufactured steel are enumerated, then follows the general provision "steel, not specially enumerated or provided for in this act."

By the ordinary rule, as above stated, this general provision would be naturally interpreted as applying to forms *ejusdem generis* with those immediately before enumerated.

Considering the significant and emphatic omission of the words, "in any form," as contained in the same provision of the then existing law, and the rule of construction above contended for as applicable to this statute, we are forced to the conclusion that the legislative intent was to restrict the generality of the provision in the pre-existing law, and to exclude from the

operation of this paragraph forms of steel not *ejusdem generis* with those immediately before enumerated.

Upon no other construction of the provision "steel, not specially enumerated or provided for in this act," can the Act of 1883 be so interpreted as to give operative effect to all its parts.

If this provision covers every kind or description of steel except what has been previously mentioned, what can the provision of the last paragraph of Schedule C, in the Act of 1883, so far as it imposes a duty upon "manufactured articles or wares not specially enumerated or provided for in this act, composed wholly or in part of * * * steel," &c., be, but mere surplusage? On our construction of the law, each part of the Act of 1883 is allowed its proper effect. We say that, passing from the enumerated articles, paragraph 183 provides for all others, *ejusdem generis*; paragraph 215 for unwrought steel other than scrap steel and ingots, for which special provision is made, and paragraph 216 for the finer manufactures, which would, in ordinary speech, be included in the terms "articles or wares," which no one would use as applicable to railway rails, forgings, &c.

As germain to the matter under discussion, though neither controlling as authority, nor perhaps competent by way of estoppel on the Government, we quote several decisions of the Secretary of the Treasury on cognate matters, with a view of showing how entirely the charge of the Court in the case at bar, and our present contention, is in accord with the rulings of the Department:

(6150.)

IRON TURNINGS—DUTY ON.

TREASURY DEPARTMENT, February 1, 1884.

SIR—The Department is in receipt of your letter of the 15th of September last, transmitting the appeal (8321*h*) of W. A. Wilkes from your decision

assessing duty at the rate of 45 per cent. *ad valorem* on certain iron turnings imported into your port on the 7th and 10th of September, 1883, which the appellants claim to be dutiable at the rate of 20 per cent. *ad valorem*.

The question involved is, whether such merchandise, which consists of the waste of new iron, shall be classified as "manufactures, articles, or wares * * * of iron" (T. I., new, 216), or as "metals, unwrought" (T. I., new, 215), and as the consideration thereof created a doubt as to the correctness of a previous ruling of the Department (Synopsis, 5088), the matter was referred to the United States Attorney-General for his views, under the requirements of the Act of March 3, 1875 (18 Stats., p. 469).

His opinion, dated the 28th ultimo, is to the effect that iron turnings are not dutiable as manufactured iron, being, as they are, the waste of iron in course of being manufactured.

The Department therefore decides that the appeal is well taken, and that the said iron turnings are dutiable at the rate of 20 per cent. *ad valorem*, as "metals unwrought," under the provision of the statute above cited.

You will reliquidate the entry accordingly, and take the necessary steps for refunding the excessive duties.

Very respectfully,

H. F. FRENCH,

Assistant Secretary.

Collector of Customs, Buffalo, N. Y.

(6244)

IRON CLIPPINGS.

TREASURY DEPARTMENT, March 15, 1884.

SIR—The Department is in receipt of your letter of the 15th of November last, transmitting the appeal (1136 *i*) of Sanderson Bros. Steel Company from your decision assessing duty at the rate of 8-10 cents per pound on certain iron clippings imported, per "Parthia," September 21, 1883, which the appellants claim to be dutiable at the rate of 3-10 cents per pound.

The merchandise consists of the waste or clippings of iron which is produced in the manufacture of nails.

On the 1st ultimo (Synopsis, 6150) it was decided that certain iron turnings, the waste of new iron, were liable to duty at the rate of 20 per cent. *ad valorem*, under the provision in Schedule C (T. I., new, 216) for "metals, unwrought." That decision applies with equal force to clippings or fillings of new iron.

In case the entry in question is not yet liquidated or has not been liquidated more than ten days, you will apply the said decision. Otherwise, you will report further to the Department.

Very respectfully,

H. F. FRENCH,

Assistant Secretary.

Collector of Customs, Boston, Mass.

d. Since the trial of this case this Court announced its decision in Schlesinger vs. Beard (120 U. S., 264), in which it held that the punchings and clippings of wrought iron boiler plates and wrought sheet iron and the ends of bridge rods and beams of wrought iron cut off or punched out in order to fit the plates, rods or beams to the place which they were to occupy in the

structure of which they were to form a part, were scrap iron within the meaning of Section 2504 of the Revised Statutes, which provided that "nothing shall be deemed scrap iron, except waste or refuse iron that has been in actual use and is fit only to be remanufactured."

The point was not made in the Court below that these crop ends were properly dutiable as scrap steel under the Act of 1883, which provides that "nothing shall be deemed scrap iron or scrap steel except waste or refuse iron or steel that has been in actual use and is fit only to be remanufactured." Nevertheless, as, if this Court should be of opinion that these crop ends, although an "unwrought metal" within the meaning of the Tariff Act, were otherwise provided for as scrap steel, it might hold that the charge of the Court was erroneous, we desire to call the attention of the Court to the difference between that case and the case at bar, a difference which is also recognized in the brief of the plaintiff in error.

In Schlesinger vs. Beard the manufacturer had made the boiler plates sheet iron, and bridge rods and beams. They were made by him for sale as such. They were complete in themselves. They were finished articles of manufacture produced for the purpose of sale in their then shape. When they were sold by the manufacturer they were put to the use for which they had been manufactured by him. They were "used by him when he sold them." When the purchaser punched and clipped them to fit them for the special positions for which he desired them in the structure of which they were to become part, these punchings and clippings were properly waste of iron which had been in actual use.

The case at bar is different essentially. The rolled bars from which these crop ends were cut were not rails, were incapable of use as rails, were not a vendible commodity known in trade. The manufacture of the rails was not completed until the imperfect ends of the rolled

bars had been cut off so as to leave a solid and true end. The cutting off of the ragged ends was a step in the process of manufacture of the rail. Until the manufacturer had completed this process and sold the perfect rail he had not used it in any sense, more especially within any sense intended by the Tariff Act.

This view of the case and of the law has been adopted by the Government on advice of the Attorney-General as contained in a decision of the Treasury Department determined in March last as follows:

(8701)

CROP-ENDS FROM SWEDISH CHARCOAL BAR IRON NOT DUTIABLE AS SCRAP IRON, SYNOPSIS 8489 MODIFIED.

TREASURY DEPARTMENT, March 1, 1888.

SIR,—On the 21st of October last (Synopsis 8489), this Department decided that certain imported charcoal iron bar ends, or the so-called crop ends cut off from Swedish bar iron in the process of the manufacture of the bars, were dutiable at the rate prescribed for scrap iron (T. I., 145), instead of at the rate prescribed for charcoal bar iron, or other forms less finished than iron in bars, prescribed by Schedule C (T. I., 148, last proviso), viz., $22 per ton.

Since then, at the request of parties interested in such importations, the matter has been reconsidered, and was submitted to the United States Attorney-General for his opinion, and the Department is now in receipt of a communication from that officer, dated the 24th ultimo, a copy of which is hereto appended, from which it will be seen that he advises that the cutting off of the ends of the bars, which is a process in the manufacture of iron bars, is not an "actual use" of the ends

thus cut off as contemplated by the provision in Schedule C (T. I. 145), which prescribes that "nothing shall be deemed scrap-iron or scrap-steel except waste or refuse iron or steel that has been in actual use, and is fit only to be remanufactured," and that this view is not inconsistent with the decision of the United States Supreme Court in the case of Schlesinger *vs.* Beard (120 U. S. Reports, 267), inasmuch as the cuttings and clippings which are the subject of that decision, were waste, or pieces cut off rods and plates which were actually used for the making of boilers and the erection of bridges.

The Department concurs in the views as expressed by the United States Attorney-General, and therefore decides that such pieces of charcoal-iron in bars are dutiable at the rate of $22 per ton, under the said proviso in Schedule C (T. I., 148).

You will be governed accordingly in the assessment of duties on all importations of such merchandise made on and after the receipt of this decision.

Respectfully yours,

I. H. MAYNARD,

Assistant Secretary.

Collector of Customs, New York.

DEPARTMENT OF JUSTICE,

WASHINGTON, D. C., February 24, 1888.

SIR—Your letter of the 31st of January, 1888, submits for my opinion whether certain charcoal-iron bar ends, consisting of the crop ends from one

to four inches long, cut off from Swedish bar-iron in the *process of manufacturing* the bars, "have been in actual use" so as to justify their classification as scrap iron, under Schedule C of the Tariff Act of 1883.

That which is a part of the process in the manufacture of an article is not an *actual use of the article.*

The cutting off of the bar ends, under the facts stated in your letter, is a part of the process of manufacturing the bar-iron. They had not, therefore, been in actual use as contemplated to entitle them to be classified as scrap iron under the definition of scrap iron contained in the statute, which is—

"That nothing shall be deemed scrap iron or scrap steel except waste or refuse iron or steel *that has been in actual use,* and is fit only to be remanufactured."

This view is not inconsistent with the ruling of the Supreme Court in the case of Schlesinger vs. Beard (120 U. S. Reports, 267). In that case the cuttings and clippings were waste cut off rods and plates which were used for making of boilers and the erection of bridges.

The clippings were cut so as to fit the rods and plates for that particular use. The Court ruled that:

"The plates, rods and beams were made to be used in a particular way. They have been so used and these cuttings and clippings are the waste of that use. Consequently they are, in our opinion, wrought scrap-iron, and dutiable as such."

The bar-iron referred to in yours is not for any particular use, but for general market. No parts of the process in the manufacture of it can be properly called "an actual use." Therefore, the

ends described in yours, cut off in the process of manufacture, should not be classified as scrap-iron.

Very respectfully,

A. H. GARLAND,
Attorney-General.

The Secretary of the Treasury.

Fourth. No material error appearing on the record it follows that the judgment of the Circuit Court must be affirmed.

J. LANGDON WARD,
Of Counsel for Defendant in Error.